

FIRST REGULAR SESSION

HOUSE BILL NO. 1014

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SECREST, MARBLE, NAEGER, HANAWAY,
BARTELSMEYER, ST. ONGE, SHIELDS (Co-sponsors), GASKILL, JETTON, ENZ, ROBIRDS,
PURGASON, TOWNLEY, HARTZLER, BARNETT, LUETKEMEYER, BEARDEN, ROARK, DEMPSEY,
CIERPIOT, REINHART, BEHNEN, MYERS, VOGEL, HOHULIN, LEGAN, LINTON, HEGEMAN,
BURTON, ROSS, MOORE, PHILLIPS, PORTWOOD, SCHWAB, CRAWFORD, LONG, OSTMANN,
KELLEY (47), SURFACE, SCOTT, HENDERSON, CHAMPION, FARES, FROELKER, BERKSTRESSER,
COOPER, HOLAND, KING, HUNTER, CUNNINGHAM, MAYER, RECTOR AND HENDRICKSON.

Read 1st time March 15, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1315L.011

AN ACT

To repeal sections 286.020, 287.020, 287.120, 287.140, 287.390, 287.550, 287.655 and 287.800, RSMo 2000, relating to workers' compensation, and to enact in lieu thereof nine new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 286.020, 287.020, 287.120, 287.140, 287.390, 287.550, 287.655 and
2 287.800, RSMo 2000, are repealed and nine new sections enacted in lieu thereof, to be known
3 as sections 286.020, 287.015, 287.020, 287.120, 287.140, 287.390, 287.550, 287.655 and
4 287.800, to read as follows:

286.020. **1.** The term of office of each member of the commission **appointed after**
2 **August 28, 2001**, shall be [six] **four** years [except that when first constituted one member shall
3 be appointed for two years, one for four years and one for six years, and thereafter all vacancies
4 shall be filled as they occur. The terms of office of the first members of the commission shall
5 begin on the date of their appointment which shall be within thirty days after the effective date
6 of this chapter]. **After August 28, 2001, no member of the commission, whether appointed**
7 **prior to or after August 28, 2001, shall serve more than a total of eight years during such**
8 **member's lifetime on the commission. The terms of the members of the commission on**
9 **August 28, 2001, shall expire on the expiration date that was set for such term prior to**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 **August 28, 2001, or on June thirtieth in the year following such commissioner's eighth year**
11 **on the commission, whichever occurs first.**

12 **2. Sixty days prior to the expiration of the term of any member of the commission,**
13 **the governor shall review the member's performance on the commission and shall notify**
14 **the member in writing as to whether or not said member will be reappointed to the**
15 **commission. Within ten days of the notification of the commission member, the governor**
16 **shall notify in writing all current members of the general assembly if a commissioner shall**
17 **be reappointed; any vacancy due to a current member having reached the eight-year term**
18 **limit; or a commissioner's notification to the governor of such commissioner's resignation.**

19 **3. Any member appointed to fill a vacancy occurring prior to the expiration of the term**
20 **for which the member's predecessor was appointed, shall be appointed by the governor, by and**
21 **with the advice and consent of the senate, for the remainder of such term. The governor may**
22 **remove any member of the commission, after notice and hearing, for gross inefficiency, mental**
23 **or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office,**
24 **incompetence or for any offense involving moral turpitude or oppression in office.**

287.015. 1. There is hereby created within the labor and industrial relations
2 **commission a "Medical Review Oversight Committee for Workers' Compensation and**
3 **Employment Security", to serve as part of the appeal process in both workers'**
4 **compensation decisions and division of employment security cases that involve an appeal**
5 **filed due to either medical issues or a professionally administered and documented positive**
6 **chemical test for a controlled substance, as that term is defined in section 195.010, RSMo.**
7 **One physician member shall serve as chairman of the medical review oversight committee**
8 **for workers' compensation and employment security for a term of one year, with a second**
9 **term at the option of the committee. One nonphysician member of the committee shall be**
10 **selected by the members of the committee to serve as vice-chairman for a term of one year,**
11 **with a second term at the option of the committee. The committee shall consist of nine**
12 **members, to be appointed by the governor with the advice and consent of the senate. No**
13 **more than five such members shall be members of the same political party. All members**
14 **of the committee shall have been residents of the state for two years prior to appointment.**
15 **All members shall be familiar with the workers' compensation and employment security**
16 **laws of this state. The members shall be classified as representatives of the following**
17 **groups due to previous employment, affiliation or interest and shall be selected in the**
18 **following numbers and in the following manner:**

19 **(1) Primary care physicians, two members, appointed from a list of six names**
20 **submitted to the governor by the largest legally recognized professional membership**
21 **organization of physicians in this state;**

22 (2) Orthopedists, two members, appointed from a list of six names submitted to the
23 governor by the largest legally recognized professional membership organization of
24 physicians and orthopedists in this state;

25 (3) Surgeons, two members, appointed from a list of six names submitted to the
26 governor by the largest legally recognized professional membership organization of
27 physicians and surgeons in this state;

28 (4) Labor, one member, appointed from a list of three names submitted to the
29 governor by labor unions recognized by the National Labor Relations Board and
30 representing members in the construction trades, manufacturing, and service industries,
31 each of which shall approve the list before it is submitted to the governor;

32 (5) Industry, one member, appointed from a list of three names submitted to the
33 governor by a recognized association representing businesses employing one to twenty-five
34 persons, a recognized association representing businesses employing twenty-six to one
35 hundred persons, and a recognized association representing businesses employing over one
36 hundred persons, each of which shall approve the list before submission to the governor;
37 and

38 (6) The public, one member, licensed to practice law in this state, appointed from
39 a list of three names submitted to the governor by the Missouri Bar.

40 2. The first members of the committee shall be selected between six and twelve
41 months of August 28, 2001. The terms of such members shall be three years each. Each
42 member shall only be allowed to serve no more than six years on the committee.

43 3. The committee shall meet on either a monthly or bimonthly basis as the
44 chairman determines is necessary for the conduct of business. Five members of the
45 committee shall constitute a quorum, so long as three members of the quorum are members
46 licensed to practice medicine in this state. The meetings of the committee shall be held at
47 locations that the chairman determines are in the best interest of both the committee and
48 the persons referring cases to the committee. Such meetings may be held by electronic or
49 teleconferencing means. Committee members may receive compensation for their duties
50 on the committee, including mileage payable at the state mileage rate and fees of one
51 hundred dollars per meeting, including electronic or teleconference meetings. Any
52 professional with whom the committee may contract for services essential to carrying out
53 the duties of this section may charge the same fee that such professional would charge in
54 the ordinary course of business. The labor and industrial relations commission shall
55 provide the committee with the clerical and legal support staff necessary for the completion
56 of the work of the committee. All committee expenses pursuant to this subsection shall be
57 paid from the workers' compensation administrative fund. The state shall conduct an

58 annual audit of all expenses charged to the fund. In order to provide accountability to the
59 citizens, employees and employers of this state and to provide evaluation of the
60 effectiveness of this section, a report of the results of such audit shall be sent to the
61 following persons:

- 62 (1) The members of the committee;
- 63 (2) The members of the labor and industrial relations commission;
- 64 (3) The director of the department of labor and industrial relations;
- 65 (4) The director of the division of workers' compensation;
- 66 (5) All administrative law judges who preside over workers' compensation or
67 employment security cases;
- 68 (6) All appeals referees;
- 69 (7) The governor; and
- 70 (8) The members of the general assembly.

71 4. Prior to any hearing before the full labor and industrial relations commission,
72 and as a part of any application for review made to the labor and industrial relations
73 commission within thirty days of the date of any award, a party may request the committee
74 to provide a medical review and professional recommendation to the labor and industrial
75 relations commission on any appeal from any award made by an administrative law judge
76 or from any decision of an appeals tribunal, provided that such case falls within the types
77 of cases the committee may hear pursuant to subsection 1 of this section. Upon any request
78 pursuant to this subsection, provided that the committee is asked to do so by the chairman
79 pursuant to this section, the committee shall make:

- 80 (1) Professional evaluations and recommendations as to whether or not an injury
81 or accident arose out of the course of employment;
- 82 (2) Professional evaluations and recommendations of an employer's liability on any
83 claim brought pursuant to this chapter;
- 84 (3) Professional evaluations and recommendations as to whether or not a particular
85 award or settlement was appropriate, as determined pursuant to any standardization of
86 awards and settlements which the board may adopt pursuant to section 287.190 or through
87 its precedential decisions pursuant to subsection 9 of this section; and
- 88 (4) Professional evaluations and recommendations of medical treatment and cost
89 of medical care.

90 5. Only an employer, employee, administrative law judge, appeals referee, the
91 division of workers' compensation or the division of employment security may refer a case
92 to the committee for review pursuant to this section. No request from any third party shall
93 be honored. When requesting that a case be submitted to the committee, the submitting

94 party shall include in such written request:

95 (1) The name, date of birth, Social Security number, phone number and return
96 address of the employee;

97 (2) The name, phone number and return address of the employer;

98 (3) The concern or question for which the case is being referred to the board; and

99 (4) Any relevant facts of the case.

100 6. Any case submitted pursuant to subsection 5 of this section shall be referred to
101 three committee members for review pursuant to this subsection. The industry member
102 of the committee and two members licensed to practice medicine, as selected by the
103 chairman, shall first review any cases submitted to the committee by employers. The labor
104 member of the committee and two members licensed to practice medicine, as selected by
105 the chairman, shall first review any cases submitted to the committee by employees. The
106 licensed attorney member of the committee shall first review any cases submitted to the
107 committee by an administrative law judge, an appeals referee or by either division. The
108 members to whom such case is first referred shall review such case and recommend an
109 award to the chairman pursuant to section 287.190 and this section.

110 7. The chairman may either recommend such award for approval by the full
111 committee or ask the full committee to make its own independent final determination
112 pursuant to subsection 4 of this section. Any award approved by the committee shall be
113 sent to the labor and industrial relations commission as a final recommendation. All
114 professional recommendations of the committee shall be communicated to all parties of
115 interest, including any referring administrative law judge, appeals referee, or division. The
116 chairman of the labor and industrial relations commission, in conjunction with the
117 directors of the division of workers' compensation and the division of employment security,
118 shall track the number of appeals to the committee, and the decision of the committee in
119 each such appeal, in relation to each administrative law judge's initial awards, or in
120 relation to each appeals tribunal's initial decisions, and shall forward such information on
121 an annual basis to the general assembly on or before January third of each year. Each
122 report to the general assembly shall be signed by the director of the department of labor
123 and industrial relations.

124 8. All decisions of the committee shall be its final professional recommendation, and
125 shall be construed, for purposes of an appeal, as a final medical review and as an
126 exhaustion of administrative review on:

127 (1) Medical issues; or

128 (2) Issues related to misconduct, or any resulting injury from such misconduct,
129 wherein positive results of a professionally administered and documented positive chemical

test for a controlled substance, as that term is defined in section 195.010, RSMo, have been found, and wherein the use of such substance is deemed by the committee to be the substantial cause of the resulting case.

9. The professional recommendation of the committee shall be the final authority on evaluation of any medical evidence or any professionally administered and documented chemical test for a controlled substance, as that term is defined in section 195.010, RSMo. Final decisions and awards by the labor and industrial relations commission shall be based on the considered professional medical recommendation of the committee, and such recommendation by the committee shall become the medical finding of fact for any future appeals in such case.

10. The committee may, in its recommendation, or the labor and industrial relations commission may, in its decision, determine that any such recommendation or decision shall serve as a precedent for future determinations of awards in substantially similar cases. The committee, upon the first review of any subsequent case by any of the three-member subcommittees pursuant to subsection 6 of this section, may decline review of any such subsequent case that the committee as a whole then determines to be a substantially similar case to an existing precedent. An identical award to the precedent case shall be applied to any case that is determined to be substantially similar. Such award shall be the committee's professional recommendation and shall carry the full force and effect of a commission's decision, if deemed a precedent by the commission pursuant to this subsection.

11. A notice of the committee's guidelines for an application for review pursuant to this section shall be made available at all offices under the budget of the department of labor and industrial relations. For two years following the organization of the committee pursuant to this section, such a notice shall be a part of any regular, annual, biannual or quarterly mailing from any division of the department of labor and industrial relations, from the department of revenue or from the department of economic development, when such mailing is directed to any employer paying taxes in this state. The printing costs of any such mailing shall be charged to the public information budget of the department of labor and industrial relations, and the mailing costs of such mailing shall be charged to the public information budget of the sending agency.

12. No rule or portion of a rule promulgated pursuant to this section shall take effect unless such rule has been promulgated pursuant to chapter 536, RSMo.

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive

4 officers of corporations. Any reference to any employee who has been injured shall, when the
5 employee is dead, also include [his] **the employee's** dependents, and other persons to whom
6 compensation may be payable. The word "employee" shall also include all minors who work for
7 an employer, whether or not such minors are employed in violation of law, and all such minors
8 are hereby made of full age for all purposes [under, in connection with, or arising out of]
9 **pursuant to** this chapter. The word "employee" shall not include an individual who is the owner
10 and operator of a motor vehicle which is leased or contracted with a driver to a for-hire common
11 or contract motor vehicle carrier operating within a commercial zone as defined in section
12 390.020 or 390.041, RSMo, or operating under a certificate issued by the motor carrier and
13 railroad safety division of the department of economic development or by the interstate
14 commerce commission.

15 2. The word "accident" as used in this chapter shall, unless a different meaning is clearly
16 indicated by the context, be construed to mean an unexpected or unforeseen identifiable event
17 or series of events happening suddenly and violently, with or without human fault, and producing
18 at the time objective symptoms of an injury. An injury is compensable if it is clearly work
19 related. An injury is clearly work related if work was [a] **the dominant** substantial factor in the
20 cause of the resulting medical condition or disability. **This chapter shall not apply to personal**
21 **health conditions of an employee which manifest themselves in the employment in which**
22 **the work was not the substantial dominant factor in the resulting need for medical**
23 **treatment.** An injury, **including an injury resulting directly or indirectly from idiopathic**
24 **causes,** is not compensable merely because work was a triggering or precipitating factor.

25 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
26 out of and in the course of employment. The injury must be incidental to and not independent
27 of the relation of employer and employee. **An injury shall not be deemed to have been**
28 **directly caused by the employment where it is shown that the employee suffers disability**
29 **as a result of** ordinary, gradual deterioration or progressive degeneration of the body caused by
30 aging [shall not be compensable, except where the deterioration or degeneration follows as an
31 incident of employment] **or by the normal activities of daily living.**

32 (2) **The employee shall not be entitled to recover for the aggravation of a**
33 **preexisting condition, except to the extent that the work-related injury causes increased**
34 **disability.** Any award of compensation shall be reduced by the amount of permanent
35 **partial disability determined to be preexisting.** If a compensable injury combines with a
36 **preexisting disease or condition to cause or prolong disability or need of treatment, the**
37 **resulting condition is compensable only to the extent that the compensable injury is and**
38 **remains the substantial dominant cause of the disability or need for treatment.** If the
39 **substantial cause of a worsened condition is an injury not arising out of and in the course**

40 of the employment, including injuries from idiopathic causes, the worsening is not
41 compensable.

42 (3) An injury shall be deemed to arise out of and in the course of the employment only
43 if:

44 (a) It is reasonably apparent, upon consideration of all the circumstances, that the
45 employment is [a] **the dominant** substantial factor in causing the injury; and

46 (b) It can be seen to have followed as a natural incident of the work; and

47 (c) It can be fairly traced to the employment as a proximate cause; and

48 (d) It does not come from a hazard or risk unrelated to the employment to which workers
49 would have been equally exposed outside of and unrelated to the employment in normal
50 nonemployment life;

51 [(3)] (4) The terms "injury" and "personal injuries" shall mean violence to the physical
52 structure of the body and to the personal property which is used to make up the physical structure
53 of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other
54 prostheses which are placed in or on the body to replace the physical structure and such disease
55 or infection as naturally results therefrom. These terms shall in no case except as specifically
56 provided in this chapter be construed to include occupational disease in any form, nor shall they
57 be construed to include any contagious or infectious disease contracted during the course of the
58 employment, nor shall they include death due to natural causes occurring while the worker is at
59 work.

60 4. "Death" when mentioned as a basis for the right to compensation means only death
61 resulting from such violence and its resultant effects occurring within three hundred weeks after
62 the accident; except that in cases of occupational disease, the limitation of three hundred weeks
63 shall not be applicable.

64 5. Without otherwise affecting either the meaning or interpretation of the abridged
65 clause, "personal injuries arising out of and in the course of such employment", it is hereby
66 declared not to cover workers except while engaged in or about the premises where their duties
67 are being performed, or where their services require their presence as a part of such service.

68 6. A person who is employed by the same employer for more than five and one-half
69 consecutive work days shall for the purpose of this chapter be considered an "employee".

70 7. The term "total disability" as used in this chapter shall mean inability to return to any
71 employment and not merely mean inability to return to the employment in which the employee
72 was engaged at the time of the accident.

73 8. As used in this chapter and all acts amendatory thereof, the term "commission" shall
74 hereafter be construed as meaning and referring exclusively to the labor and industrial relations
75 commission of Missouri, and the term "director" shall hereafter be construed as meaning the

76 director of the department of insurance of the state of Missouri or such agency of government
77 as shall exercise the powers and duties now conferred and imposed upon the department of
78 insurance of the state of Missouri.

79 9. The term "division" as used in this chapter means the division of workers'
80 compensation of the department of labor and industrial relations of the state of Missouri.

81 10. For the purposes of this chapter, the term "minor" means a person who has not
82 attained the age of eighteen years; except that, for the purpose of computing the compensation
83 provided for in this chapter, the provisions of section 287.250 shall control.

84 **11. For purposes of this chapter, the term "committee" shall mean the medical**
85 **review oversight committee for workers' compensation and employment security created**
86 **in section 287.015.**

287.120. 1. Every employer subject to the provisions of this chapter shall be liable,
2 irrespective of negligence, to furnish compensation [under the provisions of] **pursuant to** this
3 chapter for personal injury or death of the employee by accident arising out of and in the course
4 of [his] **the employee's** employment, and shall be released from all other liability therefor
5 whatsoever, whether to the employee or any other person. The term "accident" as used in this
6 section shall include, but not be limited to, injury or death of the employee caused by the
7 unprovoked violence or assault against the employee by any person.

8 2. The rights and remedies herein granted to an employee shall exclude all other rights
9 and remedies of the employee, his wife, her husband, parents, personal representatives,
10 dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury
11 or death, except such rights and remedies as are not provided for by this chapter.

12 3. No compensation shall be allowed [under] **pursuant to** this chapter for the injury or
13 death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional
14 self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

15 4. Where the injury is caused by the failure of the employer to comply with any statute
16 in this state or any lawful order of the division or the commission, the compensation and death
17 benefit provided [for under] **pursuant to** this chapter shall be increased fifteen percent.

18 5. Where the injury is caused by the willful failure of the employee to use safety devices
19 where provided by the employer, or from the employee's failure to obey any reasonable rule
20 adopted by the employer for the safety of employees, which rule has been kept posted in a
21 conspicuous place on the employer's premises, the compensation and death benefit provided for
22 herein shall be reduced fifteen percent; provided, that it is shown that the employee had actual
23 knowledge of the rule so adopted by the employer; and provided, further, that the employer had,
24 prior to the injury, made a diligent effort to cause his **or her** employees to use the safety device
25 or devices and to obey or follow the rule so adopted for the safety of the employees.

26 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
27 relating to **a drug-free work place or relating to** the use of alcohol or nonprescribed controlled
28 drugs in the workplace, which rule or policy has been kept posted in a conspicuous place on the
29 employer's premises, **or where the employee arrives at such drug-free workplace for work,**
30 **or clocks in for work, or is at an outside location but on authorized business for the**
31 **employer and the employer discovers through a professionally administered and**
32 **documented positive chemical test result for a controlled substance, as that term is defined**
33 **in section 195.010, RSMo, which test result shall be deemed misconduct connected with**
34 **work,** the compensation and death benefit provided for herein shall be [reduced fifteen percent]
35 **deemed null and void and shall not be awarded** if the injury was sustained in conjunction with
36 the use of alcohol or nonprescribed controlled drugs; provided, that it is shown that the employee
37 had actual knowledge of the rules or policy so adopted by the employer and, provided further that
38 the employer had, prior to the injury, made a diligent effort to inform the employee of the
39 requirement to obey any reasonable rule or policy adopted by the employer.

40 (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the
41 employer's rule or policy which is posted and publicized as set forth in subdivision (1) is the
42 proximate cause of the injury, then the benefits or compensation otherwise payable [under]
43 **pursuant to** this chapter for death or disability shall be forfeited. The forfeiture of benefits or
44 compensation shall not apply when:

45 (a) The employer has actual knowledge of the employee's use of the alcohol or
46 nonprescribed controlled drugs and in the face thereof fails to take any recuperative or
47 disciplinary action; or

48 (b) As part of the employee's employment, he is authorized by the employer to use such
49 alcohol or nonprescribed controlled drugs.

50

51 **The use of alcohol to the percentage of blood alcohol sufficient under Missouri law to**
52 **constitute legal intoxication shall be conclusively presumed to mean the use of alcohol**
53 **under such circumstances is the proximate cause of the injury.**

54 7. Where the employee's participation in a voluntary recreational activity or program is
55 the proximate cause of the injury, benefits or compensation otherwise payable [under] **pursuant**
56 **to** this chapter for death or disability shall be forfeited regardless that the employer may have
57 promoted, sponsored or supported the recreational activity or program, expressly or impliedly,
58 in whole or in part. The forfeiture of benefits or compensation shall not apply when:

59 (a) The employee was directly ordered by the employer to participate in such recreational
60 activity or program;

61 (b) The employee was paid wages or travel expenses while participating in such

62 recreational activity or program; or

63 (c) The injury from such recreational activity or program occurs on the employer's
64 premises due to an unsafe condition and the employer had actual knowledge of the employee's
65 participation in the recreational activity or program and of the unsafe condition of the premises
66 and failed to either curtail the recreational activity or program or cure the unsafe condition.

67 8. Mental injury resulting from work related stress does not arise out of and in the course
68 of the employment, unless it is demonstrated that the stress is work related and was extraordinary
69 and unusual. The amount of work stress shall be measured by objective standards and actual
70 events.

71 9. A mental injury is not considered to arise out of and in the course of the employment
72 if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion,
73 termination or any similar action taken in good faith by the employer.

74 10. The ability of a firefighter to receive benefits for psychological stress [under]
75 **pursuant to** section 287.067 shall not be diminished by the provisions of subsections 8 and 9
76 of this section.

287.140. 1. In addition to all other compensation, the employee shall receive and the
2 employer shall provide such medical, surgical, chiropractic, and hospital treatment, including
3 nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or
4 disability, to cure and relieve from the effects of the injury. If the employee desires, [he] **the**
5 **employee** shall have the right to select his **or her** own physician, surgeon, or other such
6 requirement, **provided that such decision shall be totally** at [his] **such employee's** such
7 employee's own expense. Where the requirements are furnished by a public hospital or other
8 institution, payment therefor shall be made to the proper authorities. Regardless of whether the
9 health care provider is selected by the employer or is selected by the employee at the employee's
10 expense, the health care provider shall have the affirmative duty to communicate fully with the
11 employee regarding the nature of the employee's injury and recommended treatment exclusive
12 of any evaluation for a permanent disability rating. Failure to perform such duty to communicate
13 shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620,
14 RSMo. When an employee is required to submit to medical examinations or necessary medical
15 treatment at a place outside of the local or metropolitan area from the place of injury or the place
16 of [his] **the employee's** residence, the employer or its insurer shall advance or reimburse the
17 employee for all necessary and reasonable expenses; except that an injured employee who resides
18 outside the state of Missouri and who is employed by an employer located in Missouri shall have
19 the option of selecting the location of services provided in this section either at a location within
20 one hundred miles of the injured employee's residence, place of injury or place of hire by the
21 employer. The choice of provider within the location selected shall continue to be made by the

22 employer. In case of a medical examination if a dispute arises as to what expenses shall be paid
23 by the employer, the matter shall be presented to the legal advisor, the administrative law judge,
24 **the medical review oversight committee for workers' compensation and employment**
25 **security** or the commission, who shall set the sum to be paid and same shall be paid by the
26 employer prior to the medical examination. In no event, however, shall the employer or its
27 insurer be required to pay transportation costs for a greater distance than two hundred fifty miles
28 each way from place of treatment. In addition to all other payments authorized or mandated
29 [under] **pursuant to** this subsection, when an employee who has returned to full-time
30 employment is required to submit to a medical examination for the purpose of evaluating
31 permanent disability, or to undergo physical rehabilitation, the employer or its insurer shall pay
32 a proportionate weekly compensation benefit based on the provisions of section 287.180 for such
33 wages that are lost due to time spent undergoing such medical examinations or physical
34 rehabilitation, except that where the employee is undergoing physical rehabilitation, such
35 proportionate weekly compensation benefit payment shall be limited to a time period of no more
36 than twenty weeks. For purposes of this subsection only, "physical rehabilitation" shall mean
37 the restoration of the seriously injured person as soon as possible and as nearly as possible to a
38 condition of self-support and maintenance as an able-bodied worker. Determination as to what
39 care and restoration constitutes physical rehabilitation shall be the sole province of the treating
40 physician. Should the employer or its insurer contest the determination of the treating physician,
41 then the director shall review the case at question and issue [his] **a** determination. Such
42 determination by the director shall be appealable like any other finding of the director or the
43 division. Serious injury includes, but is not limited to, quadriplegia, paraplegia, amputations of
44 hand, arm, foot or leg, atrophy due to nerve injury or nonuse, and back injuries not amenable
45 alone to recognized medical and surgical procedures.

46 2. If it be shown to the division, **the committee** or the commission that the requirements
47 are being furnished in such manner that there is reasonable ground for believing that the life,
48 health, or recovery of the employee is endangered thereby, **the committee may make a**
49 **professional recommendation, or** the division or the commission may order a change in the
50 physician, surgeon, hospital or other requirement.

51 3. All fees and charges [under] **pursuant to** this chapter shall be fair and reasonable,
52 shall be subject to regulation **or review** by the division [or], the commission, [or], the board of
53 rehabilitation in rehabilitation cases **or the committee pursuant to any case referred to it**
54 **pursuant to section 287.015, or pursuant to any future loss schedule promulgated by the**
55 **general assembly or the committee pursuant to section 287.190.** A health care provider shall
56 not charge a fee for treatment and care which is governed by the provisions of this chapter
57 greater than the usual and customary fee the provider receives for the same treatment or service

58 when the payor for such treatment or service is a private individual or a private health insurance
59 carrier. The division, **the committee** or the commission, or the board of rehabilitation in
60 rehabilitation cases, shall also have jurisdiction to hear and determine all disputes as to such
61 charges. A health care provider is bound by the determination **of the administrative groups**
62 **listed in this subsection** upon the reasonableness of health care bills.

63 4. The division shall, by regulation, establish methods to resolve disputes concerning the
64 reasonableness of medical charges, services, or aids. This regulation shall govern resolution of
65 disputes between employers and medical providers over fees charged, whether or not paid, and
66 shall be in lieu of any other administrative procedure **[under] pursuant to** this chapter. The
67 employee shall not be a party to a dispute over medical charges, nor shall the employee's
68 recovery in any way be jeopardized because of such dispute.

69 5. No compensation shall be payable for the death or disability of an employee, if and
70 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
71 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
72 opinion of the division or the commission, inconsiderable in view of the seriousness of the
73 injury. If the employee dies as a result of an operation made necessary by the injury, the death
74 shall be deemed to be caused by the injury.

75 6. The testimony of any physician or chiropractic physician who treated the employee
76 shall be admissible in evidence in any proceedings for compensation **[under] pursuant to** this
77 chapter, subject to all of the provisions of section 287.210.

78 7. Every hospital or other person furnishing the employee with medical aid shall permit
79 its record to be copied by and shall furnish full information to the division, **the committee** or the
80 commission, the employer, the employee or **[his] the employee's** dependents and any other party
81 to any proceedings for compensation **[under] pursuant to** this chapter, and certified copies of
82 the records shall be admissible in evidence in any such proceedings.

83 8. The employer may be required by the division, **the committee** or the commission to
84 furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes,
85 or braces, as needed, for life whenever the division or the commission shall find that the injured
86 employee may be partially or wholly relieved of the effects of a permanent injury by the use
87 thereof. The director of the division shall establish a procedure whereby a claim for
88 compensation may be reactivated after settlement of such claim is completed. The claim shall
89 be reactivated only after the claimant can show good cause for the reactivation of this claim and
90 the claim shall be made only for the payment of medical procedures involving life-threatening
91 surgical procedures or if the claimant requires the use of a new, or the modification, alteration
92 or exchange of an existing, prosthetic device. For the purpose of this subsection, "life
93 threatening" shall mean a situation or condition which, if not treated immediately, will likely

94 result in the death of the injured worker.

95 9. Nothing in this chapter shall prevent an employee being provided treatment for [his]
96 injuries by prayer or spiritual means if the employer does not object to the treatment.

97 10. The employer shall have the right to select the licensed treating physician, surgeon,
98 chiropractic physician, or other health care provider; provided, however, that such physicians,
99 surgeons or other health care providers shall offer only those services authorized within the scope
100 of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not
101 apply.

102 11. Any physician or other health care provider who orders, directs or refers a patient for
103 treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the
104 time of the referral, disclose in writing if such health care provider, any of [his] **that provider's**
105 partners or [his] **that provider's** employer has a financial interest in the institution or facility to
106 which the patient is being referred, to the following:

107 (1) The patient;

108 (2) The employer of the patient with workers' compensation liability for the injury or
109 disease being treated;

110 (3) The workers' compensation insurer of such employer; and

111 (4) The workers' compensation adjusting company for such insurer.

112 12. Violation of subsection 11 of this section is a class A misdemeanor.

113 13. (1) No hospital, physician or other health care provider, other than a hospital,
114 physician or health care provider selected by the employee at [his] **the employee's** own expense
115 pursuant to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of
116 a fee for services rendered to an employee due to a work-related injury or report to any credit
117 reporting agency any failure of the employee to make such payment, when an injury covered by
118 this chapter has occurred and such hospital, physician or health care provider has received actual
119 notice given in writing by the employee, the employer or the employer's insurer. Actual notice
120 shall be deemed received by the hospital, physician or health care provider five days after
121 mailing by certified mail by the employer or insurer to the hospital, physician or health care
122 provider.

123 (2) The notice shall include:

124 (a) The name of the employer;

125 (b) The name of the insurer, if known;

126 (c) The name of the employee receiving the services;

127 (d) The general nature of the injury, if known; and

128 (e) Where a claim has been filed, the claim number, if known.

129 (3) When an injury is [found] **determined** to be noncompensable [under] **pursuant to**

130 this chapter, the hospital, physician or other health care provider shall be entitled to pursue the
131 employee for any unpaid portion of the fee or other charges for [authorized] services provided
132 to the employee **after such determination. Billing charges for any and all medical services**
133 **rendered to an employee prior to such determination, shall be submitted in duplicate, one**
134 **to the employer and, if appropriate, the employer's representatives, within thirty days of**
135 **such treatment, and shall be paid in full within the next thirty days of submission to the**
136 **employer and his or her representative, if the claim is a nondisputed claim. Following**
137 **needed emergency services, and following any necessary initial first-day medical services,**
138 **the employer or the employer's representative may ask for a statement of first-day medical**
139 **charges performed. The employer or the employer's representative may also ask for an**
140 **estimate of medical charges prior to receipt of additional medical care and may delay**
141 **medical care for five working days, if such delay will not adversely affect the employee's**
142 **recovery, and if the delay is acceptable to the employee. The employer or the employer's**
143 **representative shall have a complete, operational medical care plan for work-related**
144 **injuries.** Any applicable statute of limitations for an action for such fees or other charges shall
145 be tolled from the time notice is given to the division by a hospital, physician or other health care
146 provider pursuant to subdivision (6) of this subsection, until a determination of
147 noncompensability in regard to the injury which is the basis of such services is made, or in the
148 event there is an appeal to the labor and industrial relations commission, until a decision is
149 rendered by that commission.

150 (4) If a hospital, physician or other health care provider or a debt collector on behalf of
151 such hospital, physician or other health care provider pursues any action to collect from an
152 employee after such notice is properly given, the employee shall have a cause of action against
153 the hospital, physician or other health care provider for actual damages sustained plus up to one
154 thousand dollars in additional damages, costs and reasonable attorney's fees.

155 (5) If an employer or insurer fails to make payment for authorized services provided to
156 the employee by a hospital, physician or other health care provider pursuant to this chapter, the
157 hospital, physician or other health care provider may proceed pursuant to subsection 4 of this
158 section with a dispute against the employer or insurer for any fees or other charges for services
159 provided.

160 (6) A hospital, physician or other health care provider whose services have been
161 authorized in advance by the employer or insurer may give notice to the division of any claim
162 for fees or other charges for services provided for a work-related injury that is covered by this
163 chapter, with copies of the notice to the employee, employer and the employer's insurer. Where
164 such notice has been filed, the administrative law judge may order direct payment from the
165 proceeds of any settlement or award to the hospital, physician or other health care provider for

166 such fees as are determined by the division. The notice shall be on a form prescribed by the
167 division.

168 **14. Any award of a permanent partial disability income benefit of any kind**
169 **pursuant to this chapter, whether awarded by the director, an administrative law judge,**
170 **the committee or the commission, shall be based solely on medical findings, and shall follow**
171 **the impairment rating, as updated by the committee, given pursuant to section 287.190.**

287.390. 1. Nothing in this chapter shall be construed as preventing the parties to claims
2 [hereunder] **pursuant to this chapter** from entering into voluntary agreements in settlement
3 [thereof] **of such claims**, but no agreement by an employee or [his] **an employee's** dependents
4 to waive [his] **the employee's** rights [under] **pursuant to** this chapter shall be valid, nor shall
5 any agreement of settlement or compromise of any dispute or claim for compensation [under]
6 **pursuant to** this chapter be valid until approved by an administrative law judge or the
7 commission, nor shall an administrative law judge or the commission approve any settlement **in**
8 which [is not in accordance with] the rights of the parties **or any unrepresented parties**, as
9 given in this chapter, **are not explained**. No such agreement shall be valid unless made after
10 seven days from the date of the injury or death.

11 2. [A compromise settlement approved by an administrative law judge or the
12 commission during the employee's lifetime shall extinguish and bar all claims for compensation
13 for the employee's death if the settlement compromises a dispute on any question or issue other
14 than the extent of disability or the rate of compensation.

15 3. Notwithstanding the provisions of section 287.190, an employee shall be afforded the
16 option of receiving a compromise settlement as a one-time lump sum payment. A compromise
17 settlement approved by an administrative law judge or the commission shall indicate the manner
18 of payment chosen by the employee.

19 4. A minor dependent, by parent or conservator, may compromise disputes and may enter
20 into a compromise settlement agreement, and upon approval by an administrative law judge or
21 the commission the settlement agreement shall have the same force and effect as though the
22 minor had been an adult. The payment of compensation by the employer in accordance with the
23 settlement agreement shall discharge the employer from all further obligation.] **If the employee**
24 **or the employee's dependents and the employer wish to agree to a settlement or cannot**
25 **agree to a settlement, all administrative law judges, all associate administrative law judges**
26 **and all legal advisors shall not refer, send or otherwise direct either party to a particular**
27 **attorney, panel of attorneys, law firm, physician, or other provider of services, except as**
28 **provided in subsection 2 of section 287.210.**

29 3. It shall be the policy of the division that no state employee, appointed
30 commissioner or committee member shall, nor shall the division, refer, send or otherwise

31 **direct any party to a particular attorney, panel of attorneys, law firm, physician or other**
32 **provider of services.**

33 **4. In the case of compromise settlements in which the employee and the employer,**
34 **either with or without representation by an attorney, agree to the settlement, provided that**
35 **the amount of the settlement equals or exceeds the physician's rating pursuant to**
36 **subdivision (6) of section 287.210, the division and all persons under the commission,**
37 **including advisors, administrative law judges, and members of the committee or the**
38 **commission, shall not refuse to approve such compromise settlement or recommend a**
39 **further appeal unless unique or unusual circumstances exist in the case and are**
40 **documented in a written notice to all parties in the case.**

41 **5. The division, all employers and all representatives of all employers shall forward**
42 **the name, title and office location of any person who refuses to follow any requirement of**
43 **this section to the members of the state senate and state house of representatives who**
44 **represent the location of the business where such injury occurred, so that such members**
45 **may recommend possible corrections to such problems to future general assemblies. The**
46 **director of the division and the chairman of the commission shall be required to jointly file**
47 **any statement of any documented complaints in the personnel record of all division**
48 **employees suspected of violating this section and any results of any administrative**
49 **proceedings to verify such complaint. Such report shall be filed with the governor and the**
50 **general assembly by the fifteenth day of January of each year, and shall state the number**
51 **of complaints, the type of complaints, the position of the employees involved without**
52 **revealing the names of the employees involved, and shall state in which of the nine offices**
53 **such incident occurred. Reports of division employees providing outstanding customer**
54 **service, both to employees and employers, shall be included in the same report and in the**
55 **same manner of description to both the governor and the general assembly, in order to**
56 **improve accountability, employer and employee satisfaction and economic viability to the**
57 **citizens of this state.**

287.550. All proceedings before [the commission or any commissioner] **any state**
2 **employee, commissioner, committee member, the department, the division, the department**
3 **of insurance, administrative law judges, legal advisors or associate administrative law**
4 **judges shall be [simple, informal and summary, and without regard to the technical] conducted**
5 **in an impartial manner and pursuant to the rules of evidence, and [no defect or irregularity**
6 **therein shall invalidate the same. Except as otherwise provided in this chapter, all such**
7 **proceedings shall be] according to such rules and regulations as may be adopted by the**
8 **commission.**

287.655. 1. Any injury or claim for compensation before the division shall be

2 **dismissed by a written order of dismissal pursuant to the filing of a written request for**
3 **dismissal with an administrative law judge by an employee or by an employee and the**
4 **employee's attorney, if represented, without the necessity of notice of hearing otherwise**
5 **required pursuant to sections 287.450, 287.460 and 287.520, the following subject to review**
6 **and appeal set forth in subsection 2 of this section.**

7 **2.** Any claim before the division may be dismissed for failure to prosecute in accordance
8 with rules and regulations promulgated by the commission, except such notice need not be by
9 certified or registered mail if the person or entity to whom notice is directed is represented by
10 counsel and counsel is also given such notice at counsel's last known address. To dismiss a
11 claim the administrative law judge shall enter an order of dismissal which shall be deemed an
12 award and subject to review and appeal in the same manner as provided for other awards in this
13 chapter.

14 **3.** On or after August 28, 2001, subject to the provisions in subsections 1 and 2 of
15 this section, any claim for compensation filed with the division pursuant to this chapter for
16 which no hearing has been conducted for a period of three years after the date of
17 acknowledgment of the claim for compensation by the division shall be automatically
18 dismissed, upon written notification by certified mail notice from the division to the
19 employee, of a hearing date certain for the employee to appear and present his or her case,
20 with prejudice to any further rights of the employee, provided that in the event the
21 employee can demonstrate that he or she is under the active medical care of a qualified
22 physician on a regular basis within six months before the expiration of the three-year
23 period, the three-year period shall not apply, but shall be extended for a period of three
24 years from the last date of such medical care as the administrative law judge shall deem
25 appropriate, provided the employee is under medical care and there is a good and valid
26 reason for keeping such case open. At such time as no such valid reason continues to exist,
27 the case shall be dismissed by the division upon written notification by certified mail notice
28 from the division to the employee of the hearing, at which time the employee's claim shall
29 be automatically dismissed, with prejudice to any further rights the employee might have
30 pursuant to this chapter. The written order of the administrative law judge shall set forth
31 in detail the nature and character of the history of the case and the reason for dismissal.

32 **4.** Should any employee fail to keep two consecutive regularly-scheduled medical
33 appointments for treatment or evaluation purposes, the employee, if given at least two
34 weeks prior notice, shall reimburse the physician an appropriate amount for the
35 physician's time in scheduling the appointment at his or her reasonable cost for same. This
36 cost may be assessed against the employee with respect to any such appointment. If the
37 employer or its insurer pays a physician a reasonable amount for such appointment not

38 **kept, such employer or its insurer shall be directly reimbursed, in lieu of said lien, out of**
39 **the settlement proceeds, or any award of compensation.**

287.800. All of the provisions of this chapter shall be **impartially and not** liberally
2 construed with a view to the public welfare, [and a substantial compliance therewith shall be
3 sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the
4 division and the commission, and they shall not be declared inoperative, illegal or void for any
5 omission of a technical nature in respect thereto] **in order to provide fairness for both**
6 **employees and employers and to promote ever-increasing economic vitality for this state.**
7 **The facts in workers' compensation cases are not to be interpreted liberally in favor of**
8 **either the rights of the injured worker or the rights of the employer. It is the specific intent**
9 **of the legislature that workers' compensation cases shall be decided on the merits and that**
10 **the common law rule of "liberal construction" based on the supposed "remedial" basis of**
11 **workers' compensation legislation shall not apply in such cases.**